

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Erie Kash Out Properties, LLC,
Debtor

Case No: 25-11729-amc

Chapter 11

OBJECTION TO MOTION FOR USE OF CASH COLLATERAL

US Bank Trust, NA, not in its individual capacity but sole as Trustee of Fidelity & Guaranty Life Mortgage Trust 2018-1, hereinafter “US Bank”, hereby objects to Debtor’s Motion to Allow the Use of Cash Collateral as follows:

1. On or about February 24, 2020, debtor, Erie Kash Out Properties, LLC, borrowed the sum of \$281,250.00 from Finance of America Commercial LLC. Attached as Exhibit A is a true and accurate copy of the Note.
2. Debtor executed a mortgage securing the loan with real property located at 30 S 62nd Street, Philadelphia, PA 19139. Attached as Exhibit B is a true and accurate copy of the Mortgage.
3. The mortgage has been assigned as follows:
 - a. Finance of America Commercial, LLC to US Bank Trust, NA, not in its individual capacity but sole as Trustee of Fidelity & Guaranty Life Mortgage Trust 2018-1.

4. The mortgage contain an “Assignment of Leases and Rent; Appointment of Receiver; Lender in Possession” provision.

5. Paragraph 30(b) of the mortgage sets forth that:

Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues (“Rents”), pair or accruing, of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender’s agent to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender’s agents, provided however, Borrower shall receive Rents the Rents until (i) Lender has given Borrower notice of default; (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender’s agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.”

6. As such, the motion to allow cash collateral in the form of the rents generated by real property located at 30 S 62nd Street, Philadelphia, PA 19139 must be denied in its entirety.

WHEREFORE, Secured Creditor, US Bank Trust, NA, not in its individual capacity but sole as Trustee of Fidelity & Guaranty Life Mortgage Trust 2018-1 respectfully request that the Court deny the pending motion to allow cash collateral.

Respectfully Submitted,

McCalla Raymer Leibert Pierce, LLP

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